

Expanding the Franchise – another Sleight of Hand by the Hungarian Government?

Viktor Z. Kazai

2018-10-26T08:13:39

The sausage factory works relentlessly. There are currently ninety bills pending before the Hungarian National Assembly, including [Bill no. T/2941](#) on the amendment of certain electoral acts introduced by Zsolt Semjén, deputy prime-minister. Despite its uninteresting title, the legislative proposal does contain an important provision: it would extend, to every Hungarian citizen residing outside the European Union (EU), the right to vote at the European Parliament elections. Obviously, ethnic Hungarians residing in another EU Member State – many of whom possess citizenship as well – could always vote at the European elections, but this bill would enfranchise those Hungarian nationals who live in a third country (outside of the EU).

At first sight this legislative proposal seems perfectly fine. First of all, citizenship and the right to vote usually go together, it is hardly an innovative idea. Secondly, EU law does not expressly regulate this issue, but [Council Decision 2018/994](#) encourages Member States to “take the measures necessary to allow those of their citizens residing in third countries to vote in elections to the European Parliament.” Thirdly, in the absence of any uniform rule, Member States have adopted different solutions; but according to a [study](#) commissioned by the European Parliament, extending the franchise to third country nationals is far from being a rarity.

However, one has learned to always be suspicious when the Hungarian legislator does something seemingly acceptable. Illiberal regimes speak the language and use the means of a constitutional democracy in disguise, thus everything may look reasonable on the surface, but in fact, conceals a drift towards authoritarianism. Hence the obvious question arises: is the extension of the European franchise to Hungarian citizens living in a third country serving the aim of simply complying with EU law or is it gerrymandering?

Uniform international standards in the field of electoral regulation are relatively underdeveloped, so states enjoy a wide leeway to adopt different solutions. Due to this diversity, we sometimes have difficulties distinguishing between gerrymandering and reasonable changes in the electoral system. This is certainly the problem in Hungary. So instead of providing a definitive answer to the abovementioned question, I offer three points of analysis which may help us better understand the intentions of the Hungarian legislator.

Legislative procedure

The circumstances of the legislative procedure itself can be indicative of intention. The introduction of the amendment to the electoral law by the governing majority without previous public consultation or political debate with the opposition suggests that the changes will serve the interests of the political parties in power.

Bill T/2941 was introduced by the deputy prime-minister. Despite the clear legal obligation of the members of the government, the bill had not been published on the website of the government, no public consultation had been carried out, and nobody from the opposition parties had been consulted about it. Indeed, we may not know about this amendment if the news portal 444.hu did not highlight it.

Unfortunately, the Hungarian government is not a big fan of genuine public debate or cooperation with the opposition. Since 2010 the practice of parliamentary legislation has had a rather exclusive character. The attitude of the governing majority was the same when it first reformed the Hungarian electoral system in 2011. As the Venice Commission [noted](#): “The Venice Commission and the OSCE/ODIHR regret that new legal provisions on fundamental aspects of the electoral process, [...], were not broadly discussed among all the relevant stakeholders. [...] the majority parties chose to follow a procedure of personal proposal for amendments instead of a government proposal, which resulted in a less transparent process, thus weakening confidence in the system.”

History of previous electoral reforms

Previous electoral reforms carried out by the governing majority can also reveal the true intentions behind a legislative amendment. If the legislative history tells us that the majority party/parties usually disproportionately benefit from electoral reforms, it is quite reasonable to draw conclusions that further changes will have the same result.

After the 2010 parliamentary elections, the Hungarian government did not wait long to completely change the electoral regulation. Since 2011, the governing majority has systematically re-regulated every single aspect of the electoral system to create a [tilted electoral playing field](#). The numerous changes can be summarized in the following trends: (i) enhancing the majoritarian character of the system, (ii) favoring the stronger parties at the expense of the smaller ones, (iii) dividing the opposition by legislative measures and making their cooperation more difficult, (iv) guaranteeing the dominance of the governing majority in the media, (v) ensuring the political loyalty of the electoral supervisory organs and (vi) making the effective enforcement of the electoral rules complicated. The discussion of all these details necessitates an alternative forum, but I think that the following short story – cited by [Krekó and Enyedi](#) – can speak volumes to the way in which the Hungarian electoral system is rigged:

“Three days after the 8 April 2018 election [...], Prime Minister Viktor Orbán released a short video. [...] In the first scene, he is strolling down a hallway

with András Patyi, the head of the national election-oversight authority. 'I read in the papers that Patyi fined me,' says a puckish Orbán—referring to a ruling that he had used children for campaign purposes without their parents' consent. 'I feel really sorry, Mister Prime Minister,' deadpans Patyi in response. Orbán brings up the matter twice more, each time chuckling about it."

The reforms have achieved their goal, the Fidesz-KDNP coalition could [easily repeat its landslide victory](#) in 2014 and 2018 despite the decrease in their popular support. In [2014](#) they obtained only 45% of the popular vote, and in [2018](#) only 49%, but their two-thirds majority was still guaranteed. Based on the 2018 [ODIHR report](#) as well we can conclude that the Hungarian elections were free, but not fair.

Potential consequences

Last, but not least, the foreseeable consequences of any amendment to the electoral rules can also serve as an indicator to decide whether it is gerrymandering or not. Is it reasonable to suspect that the governing majority will disproportionately benefit from the extension of the European franchise?

As was already discussed by Majtényi, Nagy and Kállai in their previous [blogpost](#), the regulation of the right to vote of Hungarian citizens living abroad has been systematically used by the government to build up its electoral support. Two parallel trends could be observed. Firstly, the Hungarian government tried to make it difficult for Hungarian citizens living temporarily abroad, to exercise their right to vote. It is not unusual for citizens to leave their country of origin, but in the past few years, a very high number of Hungarian nationals have decided to migrate to Western countries for political and economic reasons (but many of them still have a permanent residence in Hungary). As they already voted with their feet, the Hungarian government knew very well that it was not very popular among these people.

Hence, the government introduced one of the most manifestly discriminatory rule of the electoral system. Hungarian citizens having no residence in Hungary (see below) can vote simply by mail. However, Hungarian nationals living temporarily abroad can only cast their vote personally, which would necessitate them having to travel to the closest embassy or consulate on the day of election. This can be very burdensome. For example, the author of this article had to travel six hours just to cast a vote at the last parliamentary elections in April. No matter how unreasonable this regulation may seem, the [Constitutional Court](#) found it compatible with the Fundamental Law. The strategy of the Hungarian government was successful. Approximately [600.000 Hungarian citizens](#) live in another Member State of the EU, but only 51.854 casted a valid vote in 2018.

Secondly, the other aim of the Fidesz-KDNP was to extend the franchise to ethnic Hungarians living in neighboring countries. It was clear as day from the very beginning that the Fidesz-KDNP enjoyed the support of the large majority of ethnic Hungarians living in the neighboring countries. Hence, the introduction of the

simplified naturalization procedure and the subsequent extension of the franchise was likely to yield a growing political support for the governing majority. In light of the electoral results, we can see that this political move definitely paid off. At the [2014 elections](#) 128.429 Hungarian citizens having no residence in Hungary casted a valid vote and 122.638 of them voted for the Fidesz-KDNP. In [2018](#) this number was higher: out of 225.471 valid votes 216.561 went to the governing majority. Hungarian citizens having no permanent residence in Hungary have only limited franchise, i.e. they can vote only for the national party lists. Nevertheless, their electoral support is not negligible and more than 95% of them strongly support the Fidesz-KDNP government.

If there is any doubt whether the Fidesz-KDNP coalition was driven by pure partisan intentions, we should read the following quote from a television interview with deputy prime minister, Zsolt Semjén

“It was my life goal to unite the nation by means of public law. Symbolically speaking it has been achieved by granting citizenship to 1 million [ethnic] Hungarians. (...) These people know exactly, that their nation is the Hungarian nation, their home is this country and they also know what their moral obligation and reasonable interest are on April 8 [day of the parliamentary elections]. So I am sure that the support of the Fidesz-KDNP will be way above 90% among ethnic Hungarians living abroad. And I am also certain that this will yield more mandates than four years ago.”

Conclusion

The expansion of the right to vote at the European Parliament elections to Hungarian citizens residing in third countries does not constitute manifest gerrymandering. On the one hand, we can see that (i) citizenship and the franchise usually go together, (ii) EU law encourages Member States to take this step and (iii) it is not an unusual practice in other EU countries. On the other hand, many reasons suggest that the real intention behind this amendment is to build up the political support of the governing majority at the upcoming European Parliament elections: (i) it was introduced by the deputy prime minister without any preliminary public consultation or political debate, (ii) the Hungarian government has already reformed the electoral system many times prior to create a tilted electoral playing field and (iii) Hungarian citizens having no permanent residence in the country have been expressly used to strengthen the political support of the Fidesz-KDNP coalition.

Even if it is gerrymandering, this is far from being the nastiest trick of the government. In the same manner as it was in [2014](#) when the Fidesz-KDNP obtained 12 European mandates out of 21, the governing majority will likely win the majority of the seat next year as well. The expansion of the franchise will likely further boost the electoral success of the governing parties, but only to a rather limited extent. Most ethnic Hungarians who have been recently naturalized live in another EU Member State, so they already have the franchise. This amendment will affect only those who live in a third country, most notably in Ukraine and Serbia. The practical aspect of this political measure is not particularly significant. More interesting, however, is

the following theoretical problem: the number of seats in the European Parliament allocated to a Member State was calculated on the basis of the country's population. To what extent will the expansion of the electorate influence the fairness of the results in 2019 if the number of mandates remain the same?

